

M E M O R A N D U M

TO: Governing Board Members

FROM: Carolyn S. Ansay, General Counsel

DATE: July 25, 2012

SUBJECT: Action Required

Authorization to file suit against

The Law Office of Joseph M. Madden, Jr., LLC, as Escrow Agent, Joseph M. Madden, Esq., all other appropriate parties –

Collect on monies due and payable under Escrow Agreement for permittee's default on wetland impact mitigation on property located at Section 29, Township 43 South, Range 23 East, Lee County, Florida ("Property").

Background

This memorandum concerns a request to enforce the terms and collect monies due and payable under an Escrow Agreement provided as financial assurances for North Oaks V, LLC's ("Permittee") wetland impact mitigation requirements for Environmental Resource Permit 36-04189-P ("Permit").

The Permit was originally issued to Deep South Mining, Inc. on May 9, 2002. It was then transferred to North Oaks V, LLC on October 15, 2004 and modified on August 9, 2006. Under the Permit, the Permittee was required to complete wetland impact mitigation and monitoring and to provide financial assurance that the mitigation and monitoring would occur and meet the success criteria should the Permittee failed to comply with the mitigation requirements. The financial assurance was provided through an Escrow Agreement, dated September 9, 2009, in the amount of \$105,000.00. The District is the sole beneficiary of the monies payable under the Escrow Agreement. The Law Office of Joseph M. Madden, Jr, LLC, is the escrow agent and by law has a fiduciary duty to the beneficiary. Joseph M. Madden is the sole member of the Madden Law Firm, LLC, f/k/a the Law Office of Joseph M. Madden, Jr., LLC.

On November 24, 2010, the District issued a Notice of Violation to the Permittee for failure to perform wetland impact mitigation and associated monitoring. Permittee did not comply with the Notice. The District followed that Notice with a Request for Response, dated February 22, 2011. On June 15, 2011, the mortgagor, Iberia Bank, foreclosed on the property subject to the Permit. On April 13, 2011, the District issued its Notice of Default and request to draw upon the monies payable under the Escrow Agreement. District staff made additional attempts to amicably draw upon the escrowed monies. The Escrow Agent disregarded the requests. On July 23, 2012, the District

issued its demand letter for the entirety of the amount held in escrow. By letter dated July 24, 2012, the Escrow Agent asked that the amount payable be lowered with no legal basis warranting that request.

How this helps meet the District's 10 year Strategic Plan

This effort directly supports the District's water supply mission.

Funding Source

This litigation will be handled by the District's Office of Counsel. Any costs associated with this litigation will be paid from budgeted ad valorem funds.

This Board item impacts what areas of the District, both resource areas and geography?

The subject property is located in Lee County and the Permittee's actions have adversely impacted wetlands on the property and the Escrow Agent has not complied with the terms of the Escrow Agreement.

What concerns could this Board item raise?

If this matter is not resolved, the Permit non-compliance and unauthorized wetland impacts could continue.

Why should the Governing Board approve this item?

The Governing Board should approve this item to remedy the Permittee's Permit non-compliance and unauthorized impacts to wetlands, and to take appropriate action against all responsible parties.

If you have any questions, please do not hesitate to call me at extension 6976.

CSA/RAH